

THE CITY OF OLMOS PARK
PLANNING AND ZONING COMMISSION
MINUTES OF MEETING HELD
AUGUST 28, 2019

The Planning and Zoning Commission for the City of Olmos Park, Texas held a meeting at 5:00 p.m. on Wednesday, August 28, 2019 at City Hall. Members present were William Brooks, Shannon Collins, Dr. John Hogg, Merribell Parsons and Dr. Alison Wiesenthal. Members that were not present were Brian Hamilton. Administrative staff present was City Manager, Celia DeLeon; City Secretary, Diane Gonzales; Building Official, Ric Cavazos; City Attorney Austin Beck and Councilwoman Deanna Rickabaugh, 302 Luther Drive.

Chair William Brooks called the meeting to order and announced a quorum was present at 5:11 p.m.

Citizens to be heard: This time is provided for citizens to address the Council on issues and concerns. No action can or will be taken on issues raised under this portion of the meeting. Please state your name and address for the record and limit your remarks to a period not to exceed three minutes.

Councilwoman Deanna Rickabaugh who lives at 302 Luther Drive stated she had some concerns when Planning & Zoning brought their recommendation of no action regarding Impervious Cover to Council and she objected and thought that the Planning & Zoning should reconsider. Her issue is a long term view and it may not have been an issue in the past but she knows of one issue at Park Lane and West El Prado where a resident tore down a house causing some issues with water flow toward the neighbor. The neighbor alerted them but the homeowner having the construction done was not required to alert any of his neighbors. It did not result in a lawsuit, however she would like Planning & Zoning to re-consider the ordinance and not put the burden on the neighbor responsible and to have the neighbors alert them and show them the plan on how it may affect the flow and if the neighbor objects to it then we move to the next level.

Approve minutes from April 30, 2019.

Dr. Wiesenthal moved to approve the meeting minutes held on April 30, 2019.

Shannon Collins seconded the motion.

The vote in favor of the motion was unanimous.

Review and discuss an Ordinance amending Article II to the Code of Ordinances City of Olmos Park, Texas Chapter 40 Zoning; single-family residence districts, section 40-45 Impervious Cover; for the purpose of regulating certain improvements affecting flow patterns of surface runoff on residential lots; declaring a public purpose; incorporating recitals; providing a repealer and savings clause; providing for a penalty; providing for severability and setting an effective date.

Chair Brooks stated the Planning & Zoning had recommended not to adopt the Impervious Cover ordinance and City Council asked that we re-consider adopting an ordinance regulating the Impervious Cover. This is only talking about the backyards because there is already an ordinance in place in respect to front yards and from a practical standpoint if there is an ordinance in place you hope that homeowners are going to follow that and come to pull permits. He does not know how you would alert the homeowners on what they need to do and how you adopt a standard on as when they need to do it. Our City Inspector had some concerns about how he would enforce the permitting and regulation since we are only dealing with the backyard so you would have to peer over the fence to see what is going on. For big projects there will be

trucks and equipment going on before anything happens. When thinking through the process he starts to think whether it can be enforced and whether the property owners already have that remedy where they can seek litigation against their neighbor but are we creating a burden on the City by creating a permitting system and an inspection system.

Dr. Wiesenthal stated we were also concerned about the personal property rights and your right to do with your property as you see fit and we were concerned that would be an enforcement to inflict a standard upon homeowners to present that as if it was asked to the neighbor and we thought it would be a burden for the homeowner to have to go through any process. What if their neighbor was out of town for an extended amount of time, do they have to wait until the neighbor gets back so they can be alerted to the process. The general idea is we are all for it which is respect for our neighbors and making sure no damage is done and we could not come up with an option that seemed to make sense while respecting homeowner rights.

Shannon Collins asked if the main concern is notification of the neighbor, how is that a burden on the City and also notification of the owners, it would be just goodwill for the homeowner doing the work. If you are required to peek over the fence or wait until you see trucks it may be too late and already damage occurring and if the homeowner has to rectify then that's an added cost. She does not see how notifying the neighbor adds an expense and or any additional jobs for the City.

City Manager DeLeon stated the City would not be notifying anyone, the resident would.

Chair Brooks stated when we discussed previously there were two different suggestions, notification and a potential run off study and that process could increase cost for us as far as inspections and permitting. As a homeowner how are you to know what is going to trigger these particular notification requirements.

Shannon Collins asked on the permit application is that where you would be told to notify your neighbors?

Chair Brooks stated there is one suggestion that there is notification for improvements that would occur for affecting impervious nature of your backyard and another suggestion is that in addition to notification if it is a certain amount of impervious cover than you have to seek a run off study and that would increase cost more. If we adopt a regulation that says you are only required to notify your neighbor's enforceability or even awareness would be challenging. You will have a problem between the regulation itself and whether people are actually following it.

Merribell Parsons asked as a resident if you are doing construction on a fence that will affect your neighbor should they have come for a permit and showed plans?

Building Official Cavazos stated yes for a fence even if it includes going on top of the retaining wall and even minor repairs.

Chair Brooks stated the homeowner has a remedy outside of what is already in place, they can have their neighbor stop and they can sue for affecting their usage of their land so why would we put in a regulation to regulate what is already in place. He asked are there any legal issues if we adopt this ordinance and someone where to not follow the ordinance and then try to sell the property but the City says there is some un-permitted coverage in the backyard, will that affect the ability to sell the property?

City Attorney Beck stated the way we drafted the two options in the ordinance was not so much about adding to the permitting system. If someone were to not provide notice and make the improvement and sell the property, the only penalty provided in this ordinance is the standard of violating any ordinance and lited to a penalty.

Dr. Hogg arrived at 5:30 p.m.

City Attorney Beck stated there was a suggestion in the City Council minutes of forming a joint sub-committee with the members of the Planning & Zoning and some City Council members.

Councilwoman Deanna Rickabaugh stated she is all for property rights and she does not think that the neighbor should not be the one that has to be suing.

Dr. Wiesenthal asked if the homeowners get permits are those posted for the public to come to and view?

Building Official Cavazos stated they should be posed at the property at all times until the project is complete. Most neighbors call him and ask what the neighbors are doing.

Dr. Wiesenthal stated then that is already notice to the neighbor and she feels there is already a process in place to give notice to the neighbor and we felt any additional legislation would be infringing on individual neighbor and homeowner rights.

Shannon Collins stated as this neighborhood grows and we are seeing homes being torn down and larger homes being put on lots, the burden is on the neighbor to find out what is going on. They can call City Hall to find out about the permit but that is still not a true picture of what is going to happen. It is a lot better for the person who is doing the work to inform the neighbor and the process we have now the neighbor does not know what to expect.

Chair Brooks asked if we adopt this ordinance what is the aggrieved neighbors remedy under the adopted ordinance?

City Attorney Beck stated it would be an enforcement issue at that point and the City would not be aware. The neighbor would let the City know that this person failed to adhere to this ordinance and the City could investigate to determine what fee will be assessed.

City Manager DeLeon stated it would be a Class C Misdemeanor and the City Official would issue a citation and the Municipal Court Judge assesses the fine.

Chair Brooks stated if you have a substantial change in the property are you as the aggrieved homeowner going to be worried about what the City does for remedies. What really does this ordinance do as far as making that person whole they are still likely to go into court of law and try to force their rights or remedies.

City Attorney Beck stated the criminal penalties can go up to \$2,000 and it is the judge's discretion.

Building Official Cavazos stated it would be a violation every day. There would be no reason to be at someone's home unless a permit was issued for him to knock on door to say he is there for any inspection. When he does get phone calls the City addresses it to the property owner even if it is a shed and does not require a permit they still need to come in and tell him where the placement is and if it is ok.

Councilwoman Deanna Rickabaugh stated her issue was why does the neighbor have to be the one to be burdened. Some of these houses are reaching their end of life and because the lots are so expensive and you're going to get giant homes.

Building Official Cavazos stated in on instance it is not only costing the resident it is costing the City because of the Engineer having to read all the plans being submitted.

Chair Brook stated putting in a permit requirement that would trigger a run of study would increase our City's cost.

City Manager DeLeon stated we can add the engineer cost to the building permit fees.

Chair Brooks asked how many examples of problems have we had versus the neighbors that work together?

Building Official Cavazos stated two.

The Board agreed to have a sub-committee meet with two members of City Council to have further discussions on the Impervious Cover. The Planning & Zoning Board Committee members are William Brooks and Shannon Collins.

Dr. Wiesenthal moved to recommend a sub-committee to evaluate this issue between Planning & Zoning and City Council.

Dr. Hogg seconded the motion.

The vote in favor of the motion was unanimous.

Discuss future agenda items.

Discussion on Impervious Cover

The next meeting will be September 25, 2019 at 5:00 p.m.

There was no other business and the meeting adjourned at 5:55 p.m.

William Brooks
Chair

ATTEST:

Diane Gonzales
City Secretary